

To: CN=Shawna Bergman/OU=DC/O=USEPA/C=US@EPA[]
Cc: []
Bcc: []
From: CN=Gregory Peck/OU=DC/O=USEPA/C=US
Sent: Thur 9/17/2009 6:20:03 PM
Subject: Fw: Frontline -- follow up

FYI

Gregory E. Peck
Chief of Staff
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

202-564-5778

----- Forwarded by Gregory Peck/DC/USEPA/US on 09/17/2009 02:19 PM -----

From: Marianne Holsman/R10/USEPA/US
To: Gregory Peck/DC/USEPA/US@EPA, Betsaida Alcantara/DC/USEPA/US@EPA
Date: 09/17/2009 02:18 PM
Subject: Fw: Frontline -- follow up

Hi There:

Please see Kendra's reply. She has a clarification.

Ex. 5 - Deliberative

Please let me know.

Thanks.

Marianne Holsman
Public Affairs Director
US EPA Region 10
1200 6th Avenue
Seattle, WA 98101
desk: 206.553.1237 cell: 206.450.5895
Email: holsman.marianne@epa.gov

----- Forwarded by Marianne Holsman/R10/USEPA/US on 09/17/2009 11:19 AM -----

Kendra Gahagan <krsw10@yahoo.com>
09/17/2009 10:29 AM
To: Marianne Holsman/R10/USEPA/US@EPA
cc:
Subject Re: Frontline -- follow up

Marianne --

Thank you so much. This is all incredibly helpful and I appreciate your looking further into the final question in terms of whether supplemental EIS's have been requested by EPA involving mining projects.

I realized reading through your incredibly thorough answers that one of my questions was a bit confusing: #1(d) I'll call it, since it's the fourth item under #1 was "-- has this ever been done before? When? If so, did the permit(s) pertain to a mining project?" I actually was referring to whether EPA has ever vetoed a permit, not whether EPA has pre-emptively stop a project. My apologies for the confusing ordering of those questions. If you are able to find out whether vetoes have occurred involving permits for mining projects, that would be great, as well as vetoes on any projects in general (since I realize there may have been vetoes, perhaps not for mining-related projects - if so, that's helpful to know).

I appreciate your help and sorry again about the confusion on that point. Thank you!

Best,
Kendra

--- On Thu, 9/17/09, Holsman.Marianne@epamail.epa.gov <Holsman.Marianne@epamail.epa.gov> wrote:

> From: Holsman.Marianne@epamail.epa.gov <Holsman.Marianne@epamail.epa.gov>
> Subject: Re: Frontline -- follow up
> To: "Kendra Gahagan" <krsw10@yahoo.com>
> Date: Thursday, September 17, 2009, 12:10 PM
> Hi Kendra:
>
> Here is more background information in answer to your
> follow up
> questions on the Pebble Mine project. I hope this is
> helpful. Take
> care.
>
> 1. We were told that under Section 404(c) of the
> Clean Water Act,
> Congress gave EPA the ability to veto a Corps permit,
> should EPA
> determine the Corps made an improper decision. Under
> this authority, we
> were told EPA could also pre-emptively stop a project.
> -- does EPA indeed have the ability to veto a Corps permit
> or permits?
> Clean Water Act Section 404(c) authorizes EPA to prohibit
> or restrict
> the use of waters of the United States for activities that
> EPA
> determines would result in "unacceptable adverse
> environmental impacts."
> As a result, EPA can "veto" a permit proposed to be issued
> by the Corps
> of Engineers if the permit would result in unacceptable
> adverse
> environmental impacts.
> -- does EPA have the ability to pre-emptively stop a
> project? How is
> that different from vetoing a permit?

- > Under the Clean Water Act, EPA may use its section 404(c)
- > authority to
- > prohibit or restrict activities in waters of the United
- > States even in
- > circumstances where no permit is being sought. For
- > example, if EPA was
- > concerned that a particular waterbody was very
- > environmentally important
- > and sensitive to potential adverse impacts, the Agency
- > could restrict
- > the nature and extent of activities that could occur in
- > such water in
- > advance of a particular proposal.
- > -- has this ever been done before? When? If so,
- > did the permit(s)
- > pertain to a mining project?
- > EPA has prohibited use of waters that were proposed to be
- > impacted by
- > Corps of Engineers civil works projects that do not require
- > a Clean
- > Water Act permit. The most recent example is the
- > proposed Yazoo Pumps
- > Project in Mississippi in 2008. But this case did
- > involve a specific
- > proposal for a flood control project, even though no permit
- > was
- > required. EPA has not used 404(c) in the past to
- > prohibit use of a
- > particular site in waters of the U.S. in the absence of a
- > specific
- > project proposal.
- > -- what would constitute grounds to veto a Corps permit?
- > The Clean Water Act specifies that EPA may restrict or
- > prohibit the use
- > of waters of the United States where EPA has determined
- > that the
- > discharge of "dredged or fill material" would have an
- > unacceptable
- > adverse effect on municipal water supplies, shellfish beds
- > and fishery
- > areas, wildlife or recreational areas. See Clean
- > Water Act Section 404
- > (c) or EPA's regulations at 40 CFR Part 231 for more
- > information about
- > the use of Section 404(c).
- >
- > 2. We were told that under NEPA, EPA reviews all EIS'
- > to rate the
- > project and the quality of the EIS document and that EPA
- > could
- > "encourage" a supplemental EIS if it gave the initial EIS
- > an "adverse
- > rating."
- > -- does EPA have this ability to rate the EIS even if it is
- > NOT the lead
- > agency?

> Yes. EPA is required under NEPA and the Clean Air Act
 > to review and
 > rate all EIS's regardless of whether or not EPA is the lead
 > agency
 > responsible for preparation of the EIS.
 > -- will EPA be rating the quality of Pebble's EIS, if there
 > is one?
 > Yes. If an EIS is prepared as part of the federal
 > review of the
 > proposed Pebble Mine, EPA would be required to review and
 > rate the
 > adequacy of the EIS itself and the extent of potential
 > adverse
 > environmental impacts associated with the EIS's "preferred
 > alternative."
 > -- can EPA demand a supplemental EIS? Or just
 > "encourage" one?
 > An adverse rating by EPA does not require the lead agency
 > to prepare a
 > supplemental EIS, but such a rating strongly encourages
 > that additional
 > information is needed to fulfill the requirements of
 > NEPA. EPA may
 > choose, however, to refer the EIS to the White House
 > Council on
 > Environmental Quality if the Agency is concerned that
 > additional
 > information is warranted.
 > -- what constitutes an "adverse rating"?
 > There are three ratings assessing the adequacy and content
 > of the EIS
 > itself; 1, 2, or 3. A '3' rating is an adverse rating
 > and means that
 > the EIS contains insufficient information. There are
 > also three ratings
 > regarding the nature and extent of potential adverse
 > impacts associated
 > with the EIS's preferred alternative; Environmental
 > Concerns,
 > Environmental Objections, and Environmentally
 > Unsatisfactory. The
 > Environmentally Unsatisfactory (EU) rating is an adverse
 > rating. If EPA
 > rates the EIS as a '3', EU, or EU-3, all three constitute
 > an adverse
 > rating.
 > -- is the supplemental EIS then done by the same agency who
 > did the
 > initial one (in this case, likely the Corps?)
 > Yes - the lead federal agency (or agencies) is responsible
 > for preparing
 > any supplemental NEPA documentation.
 > -- has EPA ever asked for a supplemental
 > EIS? When? If so, did it
 > pertain to a mining project?
 > Yes - EPA has rated EIS's adversely triggering the need for

> preparation
> of a supplemental or revised EIS. We will research
> the question about
> adversely rating a mining related EIS and follow-up with
> you.

>
> *****
> Marianne Holsman
> Public Affairs Director
> US EPA Region 10
> 1200 6th Avenue
> Seattle, WA 98101
> desk: 206.553.1237 cell: 206.450.5895
> Email: holsman.marianne@epa.gov

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> Kendra
> Gahagan

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> <krsw10@yahoo.c

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> To

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>
> Marianne Holsman/R10/USEPA/US@EPA
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> 09/14/2009 02:10

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> Re: Frontline -- follow up
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> Hello Marianne --
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> I hope you enjoyed your time off! Thank you for your
> reply - I
> definitely am interested in the information. I
> appreciate your help.
>
> Best,
> Kendra
>
> --- On Mon, 9/14/09, Holsman.Marianne@epamail.epa.gov
> <Holsman.Marianne@epamail.epa.gov>
> wrote:
>
>> From: Holsman.Marianne@epamail.epa.gov
> <Holsman.Marianne@epamail.epa.gov>
>> Subject: Re: Frontline -- follow up
>> To: "Kendra Gahagan" <krsw10@yahoo.com>
>> Date: Monday, September 14, 2009, 4:58 PM
>> Hi Kendra:
>>

> > I just back from 10 days off and I'm working my way
> through
> > the backlog
> > of e-mail. I'm assuming you still need the info.
> > requested below and
> > will begin working on getting answers to your
> > questions. Let me know if
> > you already got the info. from somewhere else. I
> > should be able to get
> > back to you in a couple of days.
> >
> > Thanks!
> >
> > *****
> > Marianne Holsman
> > Public Affairs Director
> > US EPA Region 10
> > 1200 6th Avenue
> > Seattle, WA 98101
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> > Kendra
> > Gahagan
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> > <krsw10@yahoo.c
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> > To
> >
> > Marianne Holsman/R10/USEPA/US@EPA
> >
> > 09/10/2009 12:52
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> > cc
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[illegible]

> >
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> > did the
> > initial one (in this case, likely the Corps?)
> > -- has EPA ever asked for a supplemental
> > EIS? When? If so, did it
> > pertain to a mining project?
> >
> > Thank you so much for your help with this.
> > Cheers,
> > Kendra
> >
> > Kendra Gahagan
> > Reporter

> > Frontline/PBS
> > (202) 431-6008
> > krgsw10@yahoo.com
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